

IN THE TRIBUNAL OF THE PENSION FUNDS ADJUDICATOR

CASE NO.: PFA/ FS/150/99/CN

In the complaint between:

THABANG ISAAC MABUYA

Complainant

and

SOUTH AFRICAN DRUGGISTS PROVIDENT FUND

First Respondent

CHEMPRO (PTY) LTD

Second Respondent

**DETERMINATION IN TERMS OF SECTION 30M OF THE PENSION FUNDS ACT OF
1956**

1. This is a complaint in terms of section 30A(3) of the Pension Funds Act of 1956, concerning the making of a deduction from the withdrawal benefit due to the complainant, in terms of section 37D(b)(i). The complaint essentially alleges that the deduction is contrary to the rules of the fund and the Act.
2. No hearing has been held. In coming to a decision, I have had regard to the documentary evidence compiled in the course of the investigation conducted by my Assistant Adjudicator, Cikizwa Nkuhlu, and the submissions made by the parties.
3. The complainant is Thabang Isaac Mabuya, an adult male residing at Bohlokong Location in the Bethlehem district, Free State province.

4. The first respondent is the South African Druggists Pension Fund, a pension fund duly registered in terms of the Pension Funds Act (“the fund”).
5. The second respondent is Chempro (Pty) Ltd, a company with limited liability, duly registered under the company laws of the Republic of South Africa. The second respondent was the complainant’s employer from 1994 until 28 July 1997, and was also a contributor to the first respondent.
6. While the complainant was still in the employment of the employer, he obtained various loans from it, for such diverse purposes as buying a used car, relocation costs, paying rental, medical aid levies, and funeral expenses. He signed acknowledgements of debt in respect of three of the loans, amounting to R800-00, R1 500-00 and R8 960-00, respectively.
7. All three acknowledgements contained a clause which provides as follows:
 - “5. The creditor shall be entitled to deduct such amounts as may be owing by me to it from time to time during the currency hereof, from any amounts due at any relevant time to me in respect of wages and/or salary and/or remuneration of whatsoever nature and/or pension monies, *provided that such deductions are not prohibited under any municipal, provincial or statutory legislation in force at any relevant time.*”
8. On 28 July 1997, the complainant was dismissed from employment, pursuant to a disciplinary enquiry whereat he was found guilty of being absent from work without leave. Pursuant to his dismissal, he became entitled to a withdrawal benefit in the sum of R11 734-43.
9. At the time of his dismissal, he still owed the employer a sum of R12 120-23, arising out of the loans made to him by the employer.

10. The employer instructed the fund to attach the whole amount of the complainant's withdrawal benefit, and to pay it over to it in settlement of the debt , which the fund did.
11. In response to the complaint, the employer argues that the fund was entitled to make the deduction from the complainant's withdrawal benefit, as it had been authorised to do so by the acknowledgements of debt signed by the complainant.
12. Rule 11 of the first respondent's rules provides as follows:

"DEDUCTIONS FROM BENEFITS

The trustees shall have the right to make such deductions from the benefit to which a member or other beneficiary is entitled in terms of the rules as are permitted in terms of section 37D of the Act, and in respect of which a claim has been lodged in writing within such reasonable time of the event giving rise to the benefit as the trustees may from time to time fix for making such claims."

13. Section 37D(b)(i)(aa) authorises funds to make deductions in respect of a loan granted by the employer to the member "for any purpose referred to in section 19(5)(a)". The purposes referred to in section 19(5)(a) are mortgages, housing loans, and loans for renovations or alterations to a dwelling.
14. It is common cause that the loans granted to the complainant are not for any of the purposes set out in section 19(5)(a). Accordingly, the deductions were not authorised by section 37D. Moreover, the employer makes no claim that it is entitled to a deduction of an amount due as compensation under section 37D(b)(ii), or for that matter, any of the provisions of section 37D.

15. Not only did the trustees act contrary to rule 11 of the fund, but they also contravened section 37A of the Act, which specifically prohibits the reduction, transfer, cession, pledging, attachment, or any form of execution, of a pension benefit, unless it is permitted by the Act, the Income Tax Act, or the Maintenance Act.
16. I can also not accept the employer's reliance on the acknowledgements signed by the complainant. Insofar as deductions from pension benefits are concerned, the provisions of the Act, namely section 37D, read with section 37A, override any contractual arrangement entered into between the member and any third party. Even the drafter of the acknowledgements recognised that fact when he/she included, in clause 5, a proviso to the effect that such deductions will be valid only if they are "not prohibited under any municipal, provincial or statutory legislation in force at the relevant time."
17. While the clause authorising deductions to be made from the complainant's pensions is unenforceable as against his pensions, it does not render the acknowledgements ineffective for the purpose of recovering the amounts owed through the usual forms of debt-recovery before the civil courts. That option is still be available to the employer.
18. I therefore, find that the fund's action in attaching the complainant's withdrawal benefit, and paying it over to the employer in settlement of the complainant's debt, was unlawful. As such the complainant is still entitled to his benefit.

19. Accordingly, the relief granted is as follows:

19.1 The first respondent is ordered to pay to the complainant, within 6 weeks of the date of this determination, his full withdrawal benefit amounting to R11 734-43, which was due to him as at 28 July 1997, together with interest thereon, calculated at the rate as set out in the Prescribed Rate of Interest Act, from 1 October 2000 to the date of payment thereof.

DATED AT CAPE TOWN ON THIS 28TH DAY OF AUGUST 2001.

.....
JOHN MURPHY
PENSION FUNDS ADJUDICATOR